



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title):

- **WAC 458-61-335 (Easements, development rights, water rights and air rights.)**
- **WAC 458-61-400 (Creation, assignment and release of security interests.)**
- **WAC 458-61-520 (Mineral rights and mining claims.)**
- **WAC 458-61-640 (Sheriff's sale.)**

Date last reviewed: **September 1999**

Reviewer: **Ed Ratcliffe**

Date current review completed: **July 16, 2002**

Briefly explain the subject matter of the document(s):

**These rules explain the taxability of transfers of interest in real property as opposed to transfers of fee simple ownership.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	<b>X</b>	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	<b>X</b>	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document



		Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is "yes" to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**Det. No. 00-122, 20 WTD 461 (2001) Transfer of telecommunication's network, optic cable as improvements of utility easements, was a transfer of fixtures subject to real estate excise tax. Determination should be reviewed for possible incorporation or explanation in revisions to WAC 458-61-335 (Easements, development rights, water rights, and air rights).**

**Det. No. 99-066, 19 WTD 64 (2000) Transfer of railroad tracks to municipality to secure grant was transfer of a security interest and not a sale of the tracks to the city. Determination should be incorporated into WAC 458-61-400 (Creation, assignment, and release of security interests.)**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**These rules are clear, concise, and effective.**

**The following changes will result in clearer instructions for taxpayers:**

- WAC 458-61-335 should be revised to cross-reference the affidavit signature requirements discussed in WAC 458-61-080.
- WAC 458-61-520 should state that the transfer of interest in mineral rights requires an affidavit.
- WAC 458-61-640 should be revised to clarify that REET applies to a "transfer" of real property as opposed to a "sale".
- WAC 458-61-640 explains that the REET applies to a subsequent sale or assignment of the right of redemption "and" the certificate of purchase that result from a sheriff's sale. The "and" should be changed to "or", or possibly "and/or".



The Department should consider consolidating the information now found in these four separate rules into a two rules by:

- Combining the two rules that deal with the transfers of property rights (Rules 335 and 520).
- Combining Rules 400 and 640 as these rules both consider nontaxable transfers related to the holding of security interests in real property. This will add clarity by providing information regarding transfers of real property (as opposed to fee-simple ownership) in a single document.

Additionally, the tax consequences of transfers involving life estates should be addressed to reduce confusion in this area. As this is a transfer of real property as opposed to simple fee ownership, this information could be incorporated into a rule consolidating the information now found in Rules 335 and 520.

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **Chapter 82.45 (Excise tax on real estate sales)**
- **Chapter 82.46 (Counties and cities—Excise tax on real estate sales)**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Det. No. 00-122, 20 WTD 461 (2001) Transfer of telecommunication's network, optic cable as improvements of utility easements, were fixtures subject to real estate excise tax.**
- **Det. No. 99-066, 19 WTD 64 (2000) Transfer of railroad tracks to municipality to secure grant was transfer of a security interest and not a sale of the tracks to the city.**

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

## **5. Review Recommendation:**



- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**Minor revisions to WACs 458-61-335, 520, and 640 should be made for clarification purposes. In addition, the information now found in these rules and WAC 458-61-400 should be consolidated into a two rules, along with a discussion of the tax consequences of transfers involving life estates.**

**When making revisions to any rules contained in chapter 458-61 WAC, the drafter should where appropriate consolidate the information into fewer but more comprehensive rules.**

**6. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

- \_\_\_\_\_ 1  
\_\_\_\_\_ 2  
\_\_\_\_\_ 3  
\_\_\_\_\_ 4